



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 15320604

Date: JUNE 23, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for further review of the record and issuance of a new decision.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or

who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries.”

The regulation at 8 C.F.R. § 204.5(k)(2) contains the following relevant definitions:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

Exceptional ability in the sciences, arts, or business means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

In addition to the definition of “advanced degree” provided at 8 C.F.R. § 204.5(k)(2), the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) provides that a petitioner present “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.”

To demonstrate eligibility as an individual of exceptional ability, a petitioner must submit documentation that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 204.5(k)(3)(ii).

Furthermore, while neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision

Matter of Dhanasar, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

A. Eligibility for the Requested Classification

As stated above, the first step to establishing eligibility for a national interest waiver is demonstrating qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability. Although the Director's decision did not address this issue, the request for evidence stated the record established that the Petitioner "holds [a] Master of Business Administration and thus qualifies as a member of the professions holding an advanced degree" and, therefore there was no "need to evaluate whether [the Petitioner] also qualifies as an alien of exceptional ability."

For the reasons discussed below, however, we withdraw the Director's conclusion that the Petitioner has established that he is an advanced degree professional.

The submitted "Evaluation of Training, Education, and Experience" (evaluation)⁴ claims that the Petitioner's two "certificates" from [redacted] in Brazil for "the Post-Graduation [redacted] [redacted] course[s]" are the equivalent of an "MBA in Business Management (2006)" and an "MBA in Financial Management, Controlling and Audit (2009)."

According to the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Electronic Database for Global Education (EDGE),⁵ however, "[p]rofessional development and specialization programs are considered *lato sensus* (wide sense graduate-level programs) and follow independent legislation. Such programs lead toward professional certificates, not graduate degrees." It also states that "[c]redits earned in *lato sensu* graduate programs may later be transferred into a

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, 936 F.3d 868, 2019 WL 4051593 (9th Cir. 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ We may, in our discretion, use an evaluation of a person's foreign education as an advisory opinion. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). However, where an opinion is not in accord with other information or is in any way questionable, we may discount or give less weight to that evaluation. *Id.*

⁵ We consider EDGE to be a reliable source of information about foreign credential equivalencies. See *Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

master's degree program given that institutional requirements are met and institutional approval is granted.”⁶

Although the evaluator claims to be a member of AACRAO, he fails to address the discrepancies between EDGE's conclusions and his own in his evaluation.

Further, the evaluator concludes that (note: errors in the original text have not been changed):

Considering that a bachelor's degree, a postgraduate specialization course and two MBAs, followed by more than five years of full-time work experience in the field of finance, IT, project management, and production management is equivalent to a MBA in Business Administration – Financial Management, it is my expert opinion that [the Petitioner], with a bachelor's degree, a postgraduate specialization course and two MBAs, and more than 13 years of experience, has no less than the equivalent of a MBA in Business Administration – Financial Management.

Notably, the evaluation fails to indicate the length of the bachelor's degree program.⁷ According to EDGE:

The 3-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis. The 4- or 5-year *Título de Bacharel/Grau de Bacharel* represents attainment of a level of education comparable to a bachelor's degree in the United States.

Without additional evidence, the Petitioner also has not established that he holds the foreign equivalent of a U.S. bachelor's degree.

In addition, although the evaluator also provided a conclusion regarding the combination of the Petitioner's education and professional experience, he does not claim to have reviewed any employment letters to establish the Petitioner's work history or experience, as required by 8 C.F.R. § 204.5(k)(3)(i)(B).⁸ Further, the basis for his statement that the Petitioner “served in positions of increasing professional responsibility and sophistication, together with peers, under the supervision of managers, at a level of employment commensurate with Master's level training” has not been established.

The Petitioner must resolve the above inconsistencies with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.*

⁶ See <https://www.aacrao.org/edge/country/brazil> for information regarding the education system in Brazil and credential equivalencies (last accessed June 23, 2021).

⁷ We are also unable to determine the length of the program from the documents submitted.

⁸ The job duties listed in the “professional experience” section of the evaluation are taken directly from the Petitioner's resume.

In light of the above, the Director should first determine whether the Petitioner has sufficiently demonstrated that he holds the foreign equivalent of a U.S. bachelor's degree. If the Director concludes that the Petitioner has provided independent, objective evidence to establish receipt of such a degree, he should then determine whether the record contains "letters from current or former employer(s)" which establish "at least five years of progressive post-baccalaureate experience in the specialty," as required by the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B)

If the Director concludes that the Petitioner is not an advanced degree professional, he should then determine whether the Petitioner qualifies as an individual of exceptional ability.

B. *Dhanasar* Analysis

Regarding the Petitioner's claims of eligibility under the *Dhanasar* analysis, we agree with the Director's ultimate conclusions that the Petitioner has not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. The Director did determine that, although the Petitioner did not meet the first or third prong of *Dhanasar*, he had met the second prong. However, as the Director's determination appears to be based, at least in part, on the evaluator's determination that the Petitioner holds the equivalent of a master of business administration degree, we must also withdraw the Director's conclusion that the Petitioner is well positioned to advance the proposed endeavor.

III. CONCLUSION

For the reasons discussed above, we are remanding the petition for the Director to consider anew whether the Petitioner 1) qualifies for EB-2 classification, the threshold determination in national interest waiver cases and 2) is well positioned to advance the proposed endeavor. The Director may request any additional evidence considered pertinent to the new determination.

ORDER: The decision of the Director is withdrawn. The matter is remanded for further proceedings consistent with the foregoing analysis and entry of a new decision.